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No. 93-1245

In The

Supreme Court of the United States

October Term, 1993

ODECO OIL & GAS COMPANY-DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.,

Petitioners,

versus

DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER IT WAS INTENDED FOR THE LIMITATION OF LIABILITY ACT TO ABROGATE CLAIMANTS' RIGHT TO PROCEED IN THE FORA OF THEIR CHOICE WITH A JURY TRIAL PURSUANT TO THE "SAVINGS TO SUITORS" CLAUSE.

TABLE OF CONTENTS

Page

Question Presented for Review i

Table of Contents..... ii

Table of Authorities iii

Statutory Provisions 2

Statement of the Case 2

Reasons for Denying Certiorari 5

I. *Lake Tankers Corp. v. Henn* Mandates That Claimants Be Allowed To Have Their Claims Tried By Jury Pursuant To The "Savings To Suitors" Clause 5

Conclusion 8

Appendix A .....App. 1

TABLE OF AUTHORITIES

Page

CASES

In re MR. WAYNE, 729 F.Supp. 1124 (E.D. La. 1989) 6

In re Two "R" Drilling Co., 943 F.2d 576 (5th Cir. 1991) 7

Kattelman v. Otis Engineering Corp., 701 F.Supp. 560 (E.D. La. 1988) 6

Lake Tankers, Corp. v. Henn, 354 U.S. 147, 77 S.Ct. 1269 (1957) 5, 6, 7, 8

Magnolia Marine Transport v. Laplace Towing Corp., 964 F.2d 1571 (5th Cir. 1992) 8

Matter of Cooper/T. Smith Stevedoring Co., Inc., 735 F.Supp. 689 (E.D. La. 1990) 6

Matter of the Complaint of Dammers & Vanderheide, 936 F.2d 750 (2nd Cir. 1988) 6

Pershing Auto Rentals v. Gaffney, 279 F.2d 546 (5th Cir. 1960) 8

Rowan Cos., Inc. v. Griffin, 876 F.2d 26 (5th Cir. 1989) 3

STATUTES

28 U.S.C. § 1333 2

33 U.S.C. § 905(b) 3

46 U.S.C. § 183 ..... 5, 7

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David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis L. Robbins, and Joel Thompson, respondents, respectfully pray that a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on October 14, 1993, be denied.

STATUTORY PROVISIONS

The following statute, set forth in Appendix "A", is involved in this case: 28 U.S.C. § 1333.

STATEMENT OF THE CASE

This action arises out of serious personal injuries sustained by the claimants on June 2, 1991. On that date, the claimants, David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis L. Robbins and Joel Thompson, were employed by ODECO Oil and Gas Company-Drilling Division and ODECO Drilling Services, Inc. (ODECO). As part of their employment, claimants were required to conduct emergency overboard rescue drills utilizing life and safety equipment, including a life capsule vessel manufactured by Whittaker Corporation, Survival Systems Division and owned by ODECO. During one of these emergency rescue drills, the claimants were required to enter a life capsule vessel. Due to the negligent operation of the life capsule vessel, the life capsule vessel free-fell to the surface of the Gulf of Mexico, some 90 feet below, where its impact caused serious and permanently disabling injuries to the claimants. All claimants are still undergoing medical care from Jackson, Mississippi to Texas.

On January 3, 1992, ODECO filed an action for declaratory judgment or alternatively, a complaint for exoneration from or limitation of liability in the United States District Court, Eastern District of Louisiana. In the limitation proceeding, the district court entered an order on January 6, 1992 restraining any further litigation

against ODECO arising out of this casualty and requiring that all claims against ODECO be filed in the limitation proceeding by February 10, 1992.

All claimants herein filed answers to ODECO's pleadings and filed their respective claims in the limitation action. The five injured employees reserved their rights to pursue their claims pursuant to the "savings to suitors" clause in state court in their responses to ODECO's pleadings. In the claims filed, claimants sought damages from ODECO for negligence under 905(b) of the Longshore and Harbor Worker's Compensation Act and the General Maritime Law.

Shortly thereafter, claimants, Brumfield, Bonnette, Thompson and Robbins, filed suit in the District Court of Cameron County, Texas, 103rd Judicial District. Named in the Texas suit as defendants were Shell Offshore, Inc., Shell Oil Company, Whittaker Corporation-Survival Systems Division and Juan Porras; Porras, in turn, filed a cross-claim against the defendants. Thereafter, all claimants, Bonnette, Brumfield, Thompson, Robbins and Porras, filed a motion to dismiss ODECO's declaratory judgment action pursuant to the factors in *Rowan Cos., Inc. v. Griffin*, 876 F.2d 26, 30 (5th Cir. 1989). In addition, claimants requested that the restraining order entered in the limitation action be lifted to permit claimants to pursue their claims pursuant to the "savings to suitors" clause in state court with a jury, and for a stay of the limitation action pending the outcome of the state court action.

Shortly thereafter, the Texas defendants, excepting Juan Porras, removed the state suit to the United States

District Court for the Southern District of Texas, Brownsville Division, No. 92-CV-85. All plaintiffs in the Texas suit and Juan Porras moved to remand the suit to the state court. Since the decision by the Fifth Circuit Court of Appeals in this matter, the United States District Court for the Southern District of Texas, Brownsville Division, has granted claimants herein, plaintiffs in Brownsville, their Motion to Remand the entire action to the District Court of Cameron County, Texas, 103rd Judicial District for trial by jury.

Claimants' motions in this case were ultimately granted by the court below on August 17, 1992, and reasons were filed on August 19, 1992. A final judgment was entered on September 3, 1992. ODECO then appealed to the Fifth Circuit Court of Appeals. The United States Court of Appeals for the Fifth Circuit upheld the decision of the district court dismissing ODECO's declaratory action. While the court vacated the order lifting the restraining order in the limitation proceeding and remanded the case for the district court to consider only the possible ramifications of potential contribution or indemnity claims that might be asserted against ODECO by the defendants, Shell Offshore, Inc., Shell Oil Company and Whittaker Corporation, in the pending Texas State Court action, its ruling was clear that the district court must accede to the choice of fora of claimants so long as their stipulations fully protect Odeco's right to limit liability and claimants agree to abide by an admiralty court's determination as to ODECO's right to limit.

Petitioner then sought a rehearing en banc which was denied by the Fifth Circuit Court of Appeals.

REASONS FOR DENYING CERTIORARI

I. *LAKE TANKERS CORP. V. HENN* MANDATES THAT CLAIMANTS BE ALLOWED TO HAVE THEIR CLAIMS TRIED BY JURY PURSUANT TO THE "SAVINGS TO SUITORS" CLAUSE

This case involves the recurrent conflict between claimants' "savings to suitors" right and a vessel owner's statutory right to have all the matters of limitation of liability decided in a single federal court. Petitioner attempts to argue, for the first time and at this stage of the case, that the Fifth Circuit Court of Appeals has exceeded its constitutional authority by lifting the restraining order mandated by the Limitation of Liability Act. This is a novel attempt by petitioner to disguise the true issue. The true question is whether petitioner should be allowed to transform the Limitation of Liability Act from a protective instrument to an offensive weapon by which the ship owner can deprive suitors of their common-law rights. On the other hand, claimants are attempting to pursue their claims within their rights as a matter of law pursuant to the "savings to suitors" clause, while at the same time preserving the rights of petitioner in his claim for limitation of liability. The lower courts in this matter have correctly decided to lift the stay order in the limitation proceeding thereby allowing claimants to pursue their claims pursuant to the "savings to suitors" clause.

Two scenarios have been recognized in which the vessel owner's right to a federal forum in a limitation proceeding must give way to a claimant's right under the "savings to suitors" clause. The first occurs when a single claim exceeds the limitation fund, but the claimant concedes the admiralty court's exclusive jurisdiction to determine all issues relating to limitation of liability. The other occurs when the total of the claims in a multiple claim situation does not exceed the amount or value of the limitation of liability fund. If either of these situations exists, the federal court must allow the state court proceedings to resume. *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 150-54, 77 S.Ct. 1269, 1271-73 (1957); *Matter of the Complaint of Dammers & Vanderheide*, 836 F.2d 750, 754-60 (2nd Cir. 1988); *Kattelman v. Otis Engineering Corp.*, 701 F.Supp. 560, 562-65 (E.D. La. 1988); *In re MR WAYNE*, 729 F.Supp. 1124, 1127-29 (E.D. La. 1989); *Matter of Cooper/T. Smith Stevedoring Co.*, 735 F.Supp. 689, 690-91 (E.D. La. 1990).

Claimants' actions against petitioner, to be filed in the Cameron County Texas State Court upon a decision by the Federal District Court for the Eastern District of Louisiana following the order of remand by the Fifth Circuit Court of Appeals, involves multiple claims which exceed the purported value of the limitation fund involved herein. Given the multiple claims situation, without more, the federal district court could have enjoined the state court proceeding and compelled claimants to proceed in federal court in the limitation proceeding. However, claimants entered stipulations in the district court that brought them within the exceptions to exclusive federal jurisdiction. The judgment entered by

the district court on September 3, 1992 restated the stipulation protecting petitioner's right to limitation of liability as follows, to-wit:

> 1. Defendants shall bring all possible claims and causes of action against plaintiffs in the *same* court;
>
> 2. Defendants recognize plaintiffs' right to bring a limitation action in this court, but reserve the right to contest the allegations made by plaintiffs in their limitation complaint;
>
> 3. Defendants will not seek in the Texas action any judgment regarding plaintiffs' right to their limitation of liability and waive any claim of *res judicata* as to the issue of limitation of liability based on the Texas court judgment.
>
> 4. Although defendants do not agree with the stated value of the capsule, $30,000.00, in the event there is a judgment in excess of that amount, defendants will not seek to enforce the excess pending the adjudication of the limitation proceeding; and
>
> 5. Defendants agree that if plaintiffs are cast in judgment for attorney's fees and costs, then that judgment will have priority over their claims.

The above referenced judgment stipulation accommodates the claimants' and vessel owner's competing rights under the "savings to suitors" clause and Limitation of Liability Act and has been recognized for accomplishing same. *In re Two "R" Drilling Co.*, 943 F.2d 576 (5th Cir. 1991); *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152-54,

77 S.Ct. 1269, 1272-73 (1957); and *Magnolia Marine Transport v. Laplace Towing Corp.*, 964 F.2d 1571 (5th Cir. 1992). Due to the judgment of stipulation in this case, ODECO does not confront a multiple claim-inadequate fund lawsuit. Claimants have in effect, by stipulating to have their claims all heard in the same court, have transformed this case into one identical to *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152-54, 77 S.Ct. 1269, 1272-73 (1957). The judgment stipulation herein covers all possible claimants and assures ODECO will never have to pay more than the limitation fund if the admiralty court so determines. ODECO's right to limitation and to have its claim of limitation heard in federal court has been totally preserved by claimants. As the Fifth Circuit stated, "this transformation makes this case instantly distinguishable from *Pershing Auto Rentals v. Gaffney*, 279 F.2d 546 (5th Cir. 1960)". As the Court is aware, only two out of four claimants in the *Pershing* case offered to execute protective stipulations. This inadequately preserved the petitioner's right to limitation of liability and to have petitioner's claim heard in a federal forum. Claimants have avoided completely the pitfalls of *Pershing*, thus protecting petitioner and fulfilling claimants of their rights under the "savings to suitors" clause.

CONCLUSION

The bottom line is claimants are attempting to pursue their claims within their rights as a matter of law pursuant to the "savings to suitors" clause, while at the same time completely preserving the rights of petitioner in his claim for limitation of liability. Petitioner on the other

hand is attempting to prevent respondents from now proceeding in their state case transforming the Limitation of Liability Act from a protective instrument to an offensive weapon. Claimants will take whatever steps are necessary to adequately protect the rights of petitioner with respect to the issue of limitation of liability in order to pursue claimants' rights as a matter of law pursuant to the "savings to suitors" clause. If amendment of the judgment stipulation involved herein is necessary, then claimants will appropriately abide. Do not allow petitioner to transform the Limitation of Liability Act from a protective instrument to an offensive weapon by which petitioner shall deprive suitors of their common-law rights.

Respectfully submitted,

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APPENDIX A

28 U.S.C.

§ 1333 (1988). "Savings to Suitors" clause.

The district courts shall have original jurisdiction, exclusive of the courts of the states, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.